

**AGREEMENT BETWEEN THE CITY OF LINCOLN, NEBRASKA,
AND WESTERN PATHOLOGY CONSULTANTS, INC.
FOR DRUG AND ALCOHOL TESTING SERVICES**

THIS AGREEMENT is entered into this ____ day of _____, 20____, by and between the City of Lincoln, Nebraska, a municipal corporation, hereinafter referred to as the "City" and Western Pathology Consultants, Inc., a Nebraska corporation, hereinafter referred to as "Contractor."

WHEREAS, the City proposes to engage Contractor in accordance with the terms and conditions set forth herein to render drug and alcohol testing services; and

WHEREAS, Contractor possesses certain skills, experience, education, and competency to perform these services on behalf of the City, and City desires to engage Contractor for such special services on the terms herein provided:

NOW, THEREFORE, IN CONSIDERATION of the mutual obligations of the parties hereto, the parties do agree as follows:

I.

EMPLOYMENT OF CONTRACTOR

The City hereby agrees to engage Contractor, and Contractor agrees to perform drug and alcohol testing services on behalf of the City in accordance with U.S. Department of Transportation and Federal Motor Carrier Administration regulations, which services are more particularly set forth herein.

II.

ADMINISTRATOR OF AGREEMENT

Pat Kant, Employment Manager, shall be the City's representative for the purposes of administering this Agreement. Bill Ferguson shall be in charge of performance of this Agreement on behalf of Contractor.

III.

SCOPE OF SERVICES

Contractor agrees to undertake, perform, and complete in an expeditious, satisfactory, and professional manner all of the services required by the City which are set forth in the Scope of Services, a copy of which is attached hereto, marked as Attachment "A" and made a part hereof by reference.

IV.

TERM OF AGREEMENT

This Agreement shall begin on January 1, 2009 and expires on December 31, 2011. This Agreement may be renewed or extended for three separate one year periods upon the written agreement of both parties.

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V.

COMPENSATION

The City agrees to pay Contractor in accordance with the pricing schedule which is attached herto marked as Attachment "B" and made a part hereof by reference, for such services actually provided hereunder, payment to be made monthly upon submittal of a billing to the City.

VI.

SERVICES TO BE CONFIDENTIAL

All services, including reports, opinions, and information to be furnished under this Agreement shall be considered confidential and shall not be divulged, in whole or in part, to any person other than to duly authorized representatives of the City, without the prior written approval of the City.

VII.

NON-RAIDING CLAUSE

Contractor shall not engage the services of any person or persons presently in the employ of the City for work covered by this Agreement without the written consent of the City.

VIII.

TERMINATION OF AGREEMENT FOR CAUSE

The City may terminate this Agreement upon giving written notice to Contractor of such termination because of any of the following:

- A. Failure to perform the required services in a satisfactory and timely manner.
- B. Loss of certification as a substance abuse and mental health services administration approved laboratory.
- C. Breach of any of the terms and conditions of this contract.
- D. The non-appropriation by the City of finding sufficient to continue with the terms and conditions of this agreement.

In the event of termination as provided herein, Contractor shall be paid for all services satisfactorily performed up to the date of termination.

IX.

CHANGES

The City may include under this Agreement testing of employees of any other agency of the City of Lincoln upon the same terms and at the same prices as are set forth herein in the scope of the services of Contractor to be performed hereunder.

Any increase or decrease in the amount of Contractor's compensation and changes in the terms of this Agreement which are mutually agreed upon by and between the City and Contractor shall be effective when incorporated in written amendments to this Agreement.

X.

EQUAL EMPLOYMENT OPPORTUNITY

In connection with the performance of work under this Agreement, Contractor agrees that it shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, disability, national origin, age, or marital status. In the employment of persons, Contractor shall fully comply with the provisions of Chapter 11.08 and Neb Rev. Stat. 48-1122, as amended.

XI.

ASSIGNABILITY

Contractor shall not assign any interest in this Agreement, delegate any duties or work required under this Agreement, or transfer any interest in the same (whether by assignment or novation), without the prior written consent of the City thereto; provided, however, that claims for money due or to become due to Contractor from the City under this Agreement may be assigned without such approval, but notice of any such assignment shall be furnished promptly to the City.

XII.

INTEREST OF CONTRACTOR

Contractor covenants that it presently has no interest, including but not limited to, other projects or independent contracts, and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Contractor further covenants that in the performance of this Agreement no person having any such interest shall be employed or retained by him under this Agreement.

XIII.

INSURANCE AND HOLD HARMLESS

Contractor agrees to maintain such insurance as will fully protect both Contractor and the City from any and all claims under any workmen's compensation act or employer's liability laws, and from any and all other claims of whatsoever kind or nature for damage to property or for bodily injury, including death, made by anyone whomsoever which may arise from the work performed under this Agreement, either by Contractor, or by anyone directly or indirectly engaged or employed by it. Contractor shall exonerate, indemnify, and hold harmless the City from and against, and shall assume full responsibility for, payment of all federal, state, and local taxes or contributions imposed or required under unemployment insurance, social security, and income tax laws, with respect to Contractor or any such employees of Contractor as may be engaged in the performance of this Agreement. The City and its agents and employees shall not be, nor be held liable for any liabilities, penalties, or forfeitures or for any damages to goods, properties, or effects of Contractor, or of any other persons whatsoever, nor for any personal injury caused by or resulting from any negligent act or omission of Contractor. Contractor

further agrees to indemnify and hold harmless the City and the City's agents and employees against and from any and all of the foregoing liabilities, and any and all costs or expenses incurred by the City on account of any claim therefor.

XIV.

AUDIT PROVISION

The contractor shall be subject to audit pursuant to Chapter 4.66 of the Lincoln Municipal Code and shall make available to a contract auditor as defined therein, copies of all financial and performance related records and materials germane to this agreement, as allowed by law.

XV.

NOTICE

Any notice or notices required or permitted to be given pursuant to this Agreement may be personally served on the other party by the party giving such notice, or may be served by certified mail, postage prepaid, return receipt requested, to the following addresses:

City of Lincoln, Nebraska
Personnel Department
Attn: Pat Kant
555 South 10th Street
Lincoln, NE 68508

Western Pathology Consultants, Inc.
1321 Broadway
Scottsbluff, NE 69361

XVI.

INDEPENDENT CONTRACTOR

It is agreed that City is interested only in the results obtained and that Contractor shall perform as an independent contractor. Contractor is, for all purposes arising out of this Agreement, an independent contractor, and it shall not be deemed an employee of the City. It is expressly understood and agreed that Contractor shall in no event be entitled to any benefits to which City's employees are entitled, including, but not limited to, overtime, any retirement benefits, workmen's compensation benefits, and injury leave or other leave benefits.

XVII.

NEBRASKA LAW

This Agreement shall be construed and interpreted according to the laws of the State of Nebraska.

IN WITNESS WHEREOF, the City and Contractor have executed this Agreement as of the date first written above.

ATTEST:

**CITY OF LINCOLN, NEBRASKA,
A Municipal Corporation**

City Clerk

Mayor

WITNESS:

**WESTERN PATHOLOGY CONSULTANTS,
INC., a Nebraska Corporation**

Bill Ferguson

President Tom Swan

SCOPE OF SERVICES
DRUG AND ALCOHOL TESTING

Attachment A

1. INTENT

- 1.1 Request for proposal (RFP) is to contract with a company and/or organization to provide drug and/or alcohol testing services to the City of Lincoln/Lancaster County in accordance with U. S. Department of Transportation (DOT), Federal Transit Authority (FTA), Federal Motor Carrier Safety Administration (FMCSA) regulations and Lincoln Firefighters Association (IAFF) Local 644 testing program and policy.
- 1.2 Proposals may be submitted as "Full Service" or "Component Service".
 - 1.2.1 Full service proposals are required to meet all elements of a fully DOT and IAFF Local 644 compliant drug and alcohol testing program.
 - 1.2.2 Component service programs allow submitter to propose to provide one of more of the elements of a program.
 - 1.2.3 Acceptance of component service proposals requires a full complement of service offered which will meet City of Lincoln/Lancaster County need for DOT and IAFF Local 644 compliance.

2. GENERAL INFORMATION

- 2.1 Covers employees in safety sensitive functions who:
 - 2.1.1 Operate revenue service vehicles including when not in revenue service
 - 2.1.2 Operate non-revenue service vehicles that require drivers to hold CDL's
 - 2.1.3 Dispatcher controlled revenue service vehicles
- 2.2 Approximate employee pool:
 - 2.2.1 Effective 10/1/2008 - 339 (employees covered in section 2.1)
- 2.3 Employees covered under Lincoln Firefighters Association (IAFF) Local 644.
 - 2.3.1 Effective 10/1/2008 - 270 (employees covered in section 2.3)
- 2.4 Non-DOT employees
- 2.5 The City of Lincoln/Lancaster County reserves the right to add the testing of other employees.

3. SCOPE OF SERVICES NOTE: "full service" shall mean to include every item or element required by DOT/FTA/FMCSA and IAFF Local 644 policy.

- 3.1 Contractor shall operate a "turnkey" drug and alcohol testing program which is in total and complete compliance with all applicable federal and state laws.
- 3.2 Program shall include (but not be limited to) the following essential elements:
 - 3.2.1 Department of Health and Human Services (DHHS) approved laboratory.
 - 3.2.1.1 Must provide certification reports and audit reports after each DHHS evaluation.

- 3.2.1.2 Must provide prompt turn around time for all drug/alcohol test results. A maximum of 24 hour turn around on pre-employment and random.
- 3.2.1.3 Must provide certification of abiding by and complying with requirements of 49 CFR part 40.
- 3.2.1.4 Price quoted should be both a bundled and itemized price for the initial assay as well as GC/MS confirmation.
- 3.2.1.5 Must provide resumes and scientific credentials of all certifying MRO's.
- 3.2.1.6 Must be able to communicate electronically with MRO(s).
- 3.2.1.7 Provide pricing for rejected specimens.
- 3.2.1.8 Must provide evidence of contracts with other DHHS certified labs in the event of loss of certification.
- 3.2.1.9 Must be willing to indemnify Owner for any and all judgments relating to services provided under this contract.
- 3.2.1.10 Must provide statistical reports as provided in 49 CFR.
- 3.2.2 24-hour 7 day a week collection services drugs; and/or collection services alcohol.
- 3.2.3 Mobile and/or site collection services.
- 3.2.4. Medical Review Officer (MRO) system.
 - 3.2.4.1 Certified by the American Association of Medical Review Officers.
 - 3.2.4.2 Must provide price for positive, negative and split sample test results.
 - 3.2.4.3 Must be familiar with DOT rules and regulations.
 - 3.2.4.4 Submission of evidence of ability to electronically receive and communicate test results while maintaining confidentiality.
 - 3.2.4.5 Disclosure of any pending litigation against MRO regarding test results.
 - 3.2.4.6 Program must include procedures and ability to do random selection for more than one random group.
 - 3.2.4.7 Contractor is required to submit blind proficiency samples.
 - 3.2.4.8 Contractor is required to do testing and show evidence of ability to provide employee assistance training to minimum required by federal regulations.
 - 3.2.4.9 Required to provide 365 day/year 24 hour a day post accident services.
 - 3.2.4.10 A statement of indemnification to effectively indemnify the City of Lincoln/Lancaster County from any breach of standard by MRO.
 - 3.2.4.11 Reports and record keeping as set forth in 49 CFR.

- 3.2.5 Policy Development/Consultation Services.
- 3.2.6 Random testing selection and management procedures.
- 3.2.7 Quality control programs
- 3.2.8 Record keeping policy
- 3.2.9 Federal report preparation
- 3.2.10 Employee education and supervisory training
- 3.2.11 Confidentiality
- 3.3 Submitter may make a proposal for all or part of required services.
- 3.4 The City of Lincoln/Lancaster County reserves the right to negotiate each service independently or as a group.

4. COVERED DRUGS

- 4.1 Marijuana
- 4.2 Cocaine
- 4.3 Opiates (i.e., heroin, morphine, codeine)
- 4.4 Phencyclidine (PCP)
- 4.5 Amphetamines (example: racemic amphetamine, dextroamphetamine, methamphetamine)
- 4.6 Alcohol

5. TYPES OF TESTING FOR BOTH ALCOHOL AND DRUGS

- 5.1 Pre-employment
- 5.2 Reasonable cause/suspicion
- 5.3 Post accident
- 5.4 Random
- 5.5 Return to duty
- 5.6 Follow-up
- 5.7 Blind performance testing

6. WORK LOCATION/HOURS

- 6.1 Available 24 hour/day 7 days/week, 365 days/year
- 6.2 Work-sites of employees subject to testing may be in following Nebraska cities:
 - 6.2.1 Lincoln
 - 6.2.2 Ashland
 - 6.2.3 Waverly
 - 6.2.4 Davey
 - 6.2.5 Malcolm
 - 6.2.6 Denton
 - 6.2.7 Roca
 - 6.2.8 Sprague
 - 6.2.9 Walton
 - 6.2.10 Raymond
 - 6.2.11 Kramer
 - 6.2.12 Emerald
 - 6.2.13 Bennett

- 6.2.14 Hickman
- 6.2.15 Panama
- 6.2.16 Firth
- 6.2.17 Hallam

7. REFERENCES

- 7.1 Proposals shall include at least three written references for program administrator, to include:
 - 7.1.1 Complete name of client,
 - 7.1.2 Approximate number of employees covered,
 - 7.1.3 Contact person's name, address and phone number.
- 7.2 Inclusion of this information shall grant permission to contact listed individuals for a reference.
- 7.3 Include governmental entities if available.

8. OTHER SERVICES

- 8.1 Proposals shall also include any non-required elements together with applicable fees and charges. Such elements shall include:
 - 8.1.1. Legal representation
 - 8.1.2 Audit preparation
 - 8.1.3 Any other non-required services offered
- 8.2 Proposals may include any additional information which the program administrator may consider essential to the rendering of a quality testing program.
- 8.3 Continuation of these services will be solely at the City of Lincoln/Lancaster County's discretion and dependent upon the need and the Consultant's performance and willingness to negotiate a fair and reasonable contract for the subsequent work.

9. OTHER RESPONSIBILITIES

- 9.1 All parties of any Agency agreement shall be subject to audit pursuant to Chapter 4.66 of the Lincoln Municipal Code and shall make Available to a contract auditor, as defined therein, copies of all financial and performance related records and materials germane to the contract/order, as allowed by law.
- 9.2 The contractor shall not execute any contract or obligate itself in any manner with any third party with respect to the project provided herein without prior written concurrence of the City of Lincoln/Lancaster County Personnel Department.
- 9.3 The City of Lincoln/Lancaster County provides equal opportunity for all submitters and encourages minority businesses and women's business enterprises to participate in our bidding process per the Lincoln Municipal Code Chapter 11.
- 9.4 During the term of this contract, the contractor agrees to comply with the requirements of the Immigration Reform and Control Act of 1986.

- 9.5 Neither the contractor nor any of its contractors or subcontractors shall enter into any contract or subcontract or arrangement in connection with the program in which any officer, agent, or employee of the contractor during his tenure or from one year thereafter has any financial interest direct or indirect.
- 9.6 The City of Lincoln/Lancaster County shall not be obligated or be liable hereunder to any party other than the contractor.

10. PROPOSAL FEE CONTENTS

- 10.1 The length of the proposal shall not exceed 30 pages.

10.1.1 Resumes of personnel are not included in the proposal length count.

10.1.2 A brochure providing the resume data would be acceptable.

- 10.2 Expected Cost of Service: In a separate sealed envelope your firm's estimate of the proposed fees for the services outlined in this informal request for proposal

10.2.1 Included with the proposal shall be a pricing schedule covering every element of a full DOT/FTA/FMCSA & Lincoln Firefighters Association (IAFF) Local 44 compliance testing program. Pricing schedule shall be based on a per test cost or bundled rate including such items as:

10.2.1.1 Collection fee, supplies, chain of custody

10.2.1.2 Transportation of specimen

10.2.1.3 5 panel test

10.2.1.4 Cost for DOT test results.

10.2.1.5 Cost for NON-DOT test results

10.2.1.6 Cost for Split sample test results

10.2.1.7 Medical Review Officer service

10.2.1.8 Computer generated random selection for more than one group.

10.2.1.9 Random record maintenance for more than one group.

10.2.1.10 Statistical reports for each governmental group.

10.2.1.11 Certification & verification.

10.2.1.12 Positive specimen documentation storage.

10.2.1.13 Blind specimen & maintenance.

10.2.1.14 Employee record set up.

10.2.1.15 Employee record maintenance.

10.2.1.16 Annual administration.

10.2.2 Ability to bill City of Lincoln and Lancaster County separately.

10.2.2.1 Different accounts for each City of Lincoln departments.

10.2.2.2 Different accounts for each Lancaster County departments.

10.2.3 A separate envelope marked "Fee's for services".

10.2.4 Envelope will not be opened prior to the submitting firms being ranked as to qualifications.

10.2.5 Depending upon clarity and precise scope of services the fees listed can be negotiated.

10.3 The length of the Contract is request for three years with the option to renew for additional three one-year periods.

11. EVALUATION CRITERIA

11.1 All proposals will be evaluated on the following criteria:

11.1.1 Proposed personnel qualifications and firm's experience.

11.1.2 Demonstrated past performance on similar projects.

11.1.3 Clarity, conciseness, and organization of the proposal.

11.1.4 Comments and opinions provided by references.

12. SUBMITTAL PROCEDURE AND CONTENTS

12.1 Submitter's proposal must be submitted in the format outlined below:

12.1.1 State the full name and address of your organization.

12.1.2 Include the name and telephone number of personnel of your organization authorized to negotiate the proposed contract.

12.1.3 Proposals shall be submitted divided into sections, each section shall start at the top of a new page and shall cover the information relevant to the section as outlined below:

12.1.1 Policy Development/Consultation Services

12.1.2. Collection Site(s)/Services

12.1.3 Random Selection

12.1.4 Laboratory

12.1.5 MRO

12.1.6 Records, Reports, Confidentiality

12.1.7 Employee and Supervisor Training

12.1.8 Non-Required Items or other value added services

12.1.9 Credentials - Proposals shall include the following for both the program administrator and the MRO(s)

- 12.2 Descriptive statement including a copy of charter of incorporation, principal owner, officers, number of employees, area covered, number of current active clients, number of years administering DOT drug testing programs, etc.
- 12.3 Resumes for senior key staff members.
- 12.4 Organizational chart showing reporting relationships.
- 12.5 Proof of professional liability insurance carried by program administrator, and lab.
- 12.6 Proof of professional liability and medical malpractice insurance carried by each MRO.
- 12.7 Subcontractors.
- 12.8 Please submit three (3) copies of your proposal to Mr. Douglas Thorpe, Employment Technician, 555 South 10th Street, Room 107, Lincoln, Nebraska 68508, not later than 4:30pm November 14, 2008.
- 12.9 Respondents using the U. S. mail should be aware and allow for delivery prior to that time.
- 12.10 Responses received after that date and time will not be considered.
- 12.11 Please address any questions you may have to Douglas Thorpe, Employment Technician, (402) 441-7531.

13. SELECTION PROCEDURE AND SCHEDULE

- 13.1 The City of Lincoln/Lancaster County is interested in proceeding with this program effective as close to January 1, 2009, as possible.
- 13.2 The following schedule has been established for the receipt and review of the proposals:
 - 13.2.1 Receipt of proposals November 14, 2008.
 - 13.2.2. Review proposals by November 28, 2008.
 - 13.2.3 Interview firms of top ranked proposals week of December 1, 2008.
 - 13.2.3 Negotiate and award by December 12, 2008.